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4 **UNITED STATES DISTRICT COURT**
5 **DISTRICT OF NEVADA**
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7 UNITED STATES OF AMERICA,

8 Plaintiff,

9 vs.

10 ROBERT DEVELL KINCADE,

11 Defendant.
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) Case No. 2:15-cr-00071-JAD-GWF
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ORDER

13 This matter is before the Court on the Government's Motion to Strike Defendant's Motion to
14 Dismiss (ECF No. 292) filed on February 28, 2017. Defendant filed a Response (ECF No. 312) on
15 March 14, 2017 and the Government filed a Reply (ECF No. 319) on March 16, 2017. The Court
16 conducted a hearing in this matter on March 17, 2017.


17 The Government seeks an order from the Court striking Defendant's Motion to Dismiss
18 Counts Three and Five of the Third Superseding Indictment (ECF No. 273) on the grounds that it is
19 untimely because the pre-trial motions deadline was December 28, 2016 and Defendant filed his
20 motion on February 20, 2017. The Government also argues that Defendant cannot show good cause
21 for the untimeliness of his motion. Defendant, while conceding that his motion to dismiss is
22 untimely, argues that this Court should allow it to proceed on the merits because his motion to
23 dismiss addresses Defendant's constitutional rights that cannot be waived and should be decided on
24 the merits.

25 During the February 21, 2017 calendar call, the District Judge continued the trial set for
26 February 28, 2017 for 60 days and in doing so found that "the failure to continue the trial to permit
27 the parties time to fully brief (and the court a reasonable time to decide) the new motion to dismiss
28 that was filed on calendar call would result in a miscarriage of justice." *Minutes of Proceedings*

1 (ECF No. 282). Therefore, the Court finds that although Defendant's motion to dismiss is untimely,
2 the interests of justice mandate that it should be decided on the merits. Accordingly,

3 **IT IS HEREBY ORDERED** that the Government's Motion to Strike Defendant's Motion
4 to Dismiss (ECF No. 292) is **denied**.

5 DATED this 11th day of April, 2017.

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7 GEORGE FOLEY, JR.
8 United States Magistrate Judge
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